A

TENAGA NASIONAL BHD v. TERNAKAN AIR WUI KYEE SDN BHD & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
BALIA YUSOF WAHI JCA
HAMID SULTAN ABU BACKER JCA
B BADARIAH SAHAMID JCA
[CIVIL APPEALS NO: A-02-572-2011 & P-02(NCVC)(W)-201-01-2013]
21 MAY 2015

C ***UTILITIES:*** *Electricity – Consumption and usage – Claim for loss of revenue – Tampered meter – Conviction under s. 37(1), (3) or (14) Electricity Supply Act 1990 – Whether a pre-requisite to civil claim for loss of revenue under s. 38*

The two appeals herein arose from alleged loss of revenue to Tenaga Nasional Bhd ('TNB') as a result of 'tampered meter', pursuant to s. 38 of
D the Electricity Supply Act 1990 ('the Act'). The only question for determination in the appeals was whether a conviction under s. 37(1), (3) or (14) of the Act is required as a pre-condition before TNB was able to commence a civil claim for loss of revenue due to meter tampering pursuant to s. 38 of the Act.

E **Held (allowing appeals)**
Per Hamid Sultan Abu Backer JCA delivering the judgment of the court:

(1) Even though the statute covers the relationship between TNB and the consumer, the contract for electricity supply is commercial in nature. It will be abhorrent to justice and fair play for the court to condone a
F consumer who has benefited from a tampered meter to escape from payment to TNB for its electricity usage. (para 18)

(2) The burden for TNB under s. 38(1) of the Act is a light one, which is to show a commission of an offence, and in civil cases it must be limited to balance of probabilities. It is clear from the section that the
G Parliament had intended a simple procedure to disconnect electricity supply and pursue TNB's claim for the loss of revenue by issuing a statement under s. 38(4) of the Act without any need for TNB to resort to the court to take legal action to disconnect the electricity supply. If TNB has to wait for prosecution and conviction, which may take
H years, the consumer will be unduly enriched by the crime and the purpose for which Parliament enacted the legislation will be defeated. In the circumstances, a conviction is not necessary to pursue a claim under s. 38(3) to (5) of the Act. (paras 19 & 20)

Bahasa Malaysia *Translation Of Headnotes*

I

Kedua-dua rayuan ini berbangkit daripada dakwaan kerugian hasil kepada Tenaga Nasional Bhd ('TNB') akibat 'usikan meter' menurut s. 38 Akta Bekalan Elektrik 1990 ('Akta'). Satu-satunya persoalan untuk dipertimbangkan

dalam rayuan-rayuan ini adalah sama ada sabitan di bawah s. 37(1), (3) atau (14) Akta diperlukan sebagai pra-syarat sebelum TNB boleh memulakan tuntutan sivil bagi kerugian hasil disebabkan oleh usikan meter berikutan s. 38 Akta.

Diputuskan (membenarkan rayuan-rayuan)
Oleh Hamid Sultan Abu Backer HMR menyampaikan penghakiman mahkamah:

(1) Walaupun statut merangkumi hubungan antara TNB dan pengguna, kontrak bagi bekalan elektrik adalah bersifat komersial. Adalah bertentangan dengan keadilan bagi mahkamah membiarkan seseorang pengguna yang telah memperolehi faedah daripada usikan meter terselamat daripada bayaran kepada TNB bagi kegunaan elektrik.

(2) Beban ke atas TNB di bawah s. 38(1) adalah ringan, iaitu untuk menunjukkan suatu kesalahan telah dilakukan, dan dalam kes sivil ia terhad kepada imbangan kebarangkalian. Adalah jelas daripada seksyen tersebut bahawa Parlimen meniatkan prosedur mudah untuk memutuskan bekalan elektrik dan meneruskan tuntutan TNB bagi kerugian hasil dengan mengeluarkan kenyataan di bawah s. 38(4) Akta tanpa apa-apa keperluan bagi TNB memulakan tindakan guaman di mahkamah untuk memutuskan bekalan elektrik. Jika TNB perlu menunggu pendakwaan dan sabitan, yang mungkin mengambil tempoh bertahun lamanya, pengguna akan diperkaya dengan berlebihan oleh jenayah tersebut dan tujuan Parlimen menggubal perundangan tersebut akan gagal. Dalam keadaan tersebut, sabitan tidak diperlukan untuk meneruskan tuntutan di bawah s. 38(3) hingga (5) Akta.

Case(s) referred to:

Claybricks & Tiles Sdn Bhd lwn. Tenaga Nasional Bhd [2006] 4 CLJ 892 CA ***(refd)***
Comandate Marine Corp v. Pan Australia Shipping Pty Ltd [2006] FCAFC 192 ***(refd)***
Damai Jaya Realty Sdn Bhd v. Pendaftar Hakmilik Tanah, Selangor [2015] 1 LNS 7 CA ***(refd)***
Goh Guan Seng v. Tenaga Nasional Bhd [2012] 1 LNS 735 HC ***(refd)***
Ichi-Ban Plastic (M) Sdn Bhd v. Tenaga Nasional Bhd [2014] 1 LNS 750 CA ***(refd)***
Kenchava Kom Sanyellappa Hosmani and Another v. Girimallappa Channappa Somasagar AIR 1924 PC 209 ***(refd)***
Keng Soon Finance Bhd v. MK Retnam Holdings Sdn Bhd & Anor [1989] 1 CLJ 897; [1989] 1 CLJ (Rep) 1 PC ***(refd)***
Poon Wai Mung v. Tenaga Nasional Bhd [2012] 1 LNS 712 HC ***(refd)***
Taiwan Chief Precision Technology Sdn Bhd v. Tenaga Nasional Bhd [2014] 4 CLJ 23 CA ***(refd)***
Tenaga Nasional Bhd v. AWP Enterprise (M) Sdn Bhd [2015] 1 CLJ 400 CA ***(refd)***
Tenaga Nasional Bhd v. EE-Lian Plastic Industries (M) Sdn Bhd [2013] 2 CLJ 697 HC ***(refd)***
Tenaga Nasional Bhd v. Empayar Canggih Sdn Bhd [2013] 1 LNS 637 HC ***(refd)***
Tenaga Nasional Bhd lwn. Eoss Grand Industries (M) Sdn Bhd [2012] 1 LNS 917 HC ***(refd)***
Tenaga Nasional Bhd v. Ichi-Ban Plastic (M) Sdn Bhd [2013] 1 LNS 389 HC ***(refd)***

Tenaga Nasional Bhd v. JCY HDD Technology Sdn Bhd [2013] 7 CLJ 799 HC ***(refd)***
Tenaga Nasional Bhd lwn. Medicplas Industries Sdn Bhd [2011] 1 LNS 1410 HC ***(refd)***
Tenaga Nasional Bhd v. Nikmat Maju Development Sdn Bhd [2013] 1 LNS 416 HC ***(refd)***
Tenaga Nasional Bhd v. Star Polymer Sdn Bhd [2004] 1 LNS 124 HC ***(refd)***
Tenaga Nasional Bhd v. Takatronics (M) Sdn Bhd & Ors [2010] 1 LNS 1559 HC ***(refd)***
WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd [2012] 4 CLJ 478 FC ***(refd)***

Legislation referred to:
Electricity Supply Act 1990, ss. 37(1), (3), (14), 38(1), (3), (4), (5)

(Civil Appeal No: A-02-572-2011)
For the appellant - Steven Thiru (Fathima Idris & David Mathew with him); M/s Idris & Assocs
For the respondent - Karin Lim Ai Ching (with Murgan A Maniam & Kartini Mansor with him); M/s Ngeh & Co

(Civil Appeal No: P-02(NCVC)(W)-201-01-2013)
For the appellant - Steven Thiru (Fathima Idris & David Mathew with him); M/s Idris & Assocs
For the respondent - Karin Lim Ai Ching (Murgan A Maniam, Simon Tan Hong Jin & Loo Shin Yee with him); M/s Aswar, Simon & Azhar

[Appeals from (i) High Court, Taiping; Civil Suit No: 22-38-2004;
(ii) High Court, Penang; Civil Suit No: 22NCVC-423-2011]

Reported by S Barathi

JUDGMENT

Hamid Sultan Abu Backer JCA:

[1] Tenaga Nasional Berhad (Tenaga) has two appeals before us. The first appeal no. is A-02-572-2011 and the respondent is Ternakan Air Wui Kyee Sdn Bhd (Ternakan). In the first appeal, Tenaga is the defendant and had brought a counterclaim against Ternakan for loss of revenue as a result of 'tampered meter', pursuant to s. 38 of Electricity Supply Act 1990 (ESA 1990). The Ternakan's claim against Tenaga was related to threat of disruption of electricity supply and/or disruption, defamation, etc. The learned trial judge has dismissed Ternakan's claim as well as Tenaga's counterclaim. The first appeal is in respect of Tenaga's appeal on the counterclaim only.

[2] In the second appeal, No. P-02(NCVC)(W)-201-01-2013, Tenaga the appellant was the plaintiff and EE-Lian Plastic Industries Sdn Bhd (EE-Lian) was the defendant. Tenaga's claim for loss of revenue for the 'tampered meter' pursuant to s. 38 of ESA 1990 was dismissed.

[3] Both the appeals can be conveniently disposed off upon the determination of one issue namely:

> Whether or not a conviction under sections 37(1), (3) or (14) of ESA 1990 is required as a pre-condition before Tenaga is able to commence a civil claim for loss of revenue due to meter tampering, pursuant to section 38 of ESA 1990.

For ease of reference, ss. 37(1), (3), (14) and 38 of ESA 1990 which are the sections related to these appeals is set out below:

37. (1) Any person who tampers with or adjusts any installation or part thereof or manufactures or imports or sells any equipment so as to cause or to be likely to cause danger to human life or limb or injury to any equipment or other property shall be guilty of an offence and for each such offence shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

...

(3) Any person who in any manner dishonestly:

(a) abstracts electricity;

(b) consumes electricity;

(c) uses electricity;

(d) alters the index of any meter or other instrument used on or in connection with any installation of any supply authority or any licensed installation for recording the output or consumption of electricity; or

(e) prevents any such meter or instrument from duly recording the output or consumption of electricity, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

...

(14) Any person who damages any meter or other instrument used on or in connection with any licensed installation for recording the output or consumption of electricity shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

38. (1) Where any person employed by a licensee finds upon any premises evidence which in his opinion proves that an offence has been committed under subsection 37(1), (3) or (14), the licensee or any person duly authorised by the licensee may, upon giving not less than twenty-four hours' notice, in such form as may be prescribed, cause the supply of electricity to be disconnected from the said premises.

(1A) Notwithstanding any other provisions in this Act, where a police officer not below the rank of Assistant Superintendent applies to a supply authority or a licensee for the disconnection of the supply of electricity to any premises for a period not exceeding one calendar month under section 21A of the Common Gaming Houses Act 1953 [Act 289], the supply authority or the licensee or any person

A authorised by the supply authority or the licensee shall immediately disconnect or cause the supply of electricity to be disconnected from those premises.

(2) If the supply of electricity has been disconnected under subsection (1), it shall not be reconnected until the licensee at his discretion B gives permission for reconnection:

Provided that the period of disconnection shall not exceed three months.

(2A) Notwithstanding subsection (2), if the supply of electricity has been disconnected under subsection (1A), it shall not be reconnected C without the written permission of a police officer not below the rank of Assistant Superintendent.

(3) The licensee may require the consumer to pay him for the loss of revenue due to the offence committed under subsections 37(1), (3) and (14) and any expenses incurred by the licensee under this D section including expenses incurred in respect of the reconnection of electricity supply.

(4) A written statement by an employee of the licensee duly certified by the licensee or any person authorised by the licensee specifying:

(a) the amount of loss of revenue or the expenses incurred by the E licensee; and

(b) the person liable for the payment thereof, shall be *prima facie* evidence of the payment that has to be made by the consumer under subsection (3).

(5) The amount stated in the written statement shall, within the period F specified in the statement, be due and payable to the licensee and in default of payment such amount shall be recoverable by civil action in a court.

[4] Learned counsel for the appellant says conviction is not necessary and learned counsel for the respondent says conviction is necessary. There are a G number of cases in support of both proposition though the Federal Court's decision in *WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd* [2012] 4 CLJ 478; [2012] 4 MLJ 296 deals with s. 38(1) only and not s. 38(3) to (5). Learned counsel for the respondent before us argues that the interpretation of section 38(1) should not be applied for the interpretation of section 38(3). H The appellant says, a section must be read as a whole and must not be read disjunctively. The appellant asserts the interpretation of section 38(1) made by the Federal Court must be followed in interpreting section 38(3) of ESA 1990.

[5] After hearing lengthy submissions of parties, we reserved judgment. I My learned brother Balia Yusof bin Hj Wahi JCA and my learned sister Badariah binti Sahamid JCA have read the draft judgment and approved the same. This is our judgment.

First Appeal

[6] Tenaga's defence and counterclaim can be summarised as follows:

(i) Tenaga's meter had been tampered;

(ii) the defendant had issued notice under s. 38 ESA 1990;

(iii) in consequence of meter tampering there was loss of revenue of RM53,169.80;

(iv) the claim is based on s. 38(4) to (5) of ESA 1990.

[7] We must say that Tenaga's defence and counterclaim are very brief and there was no prayer for interest or costs.

[8] The learned trial judge's judgment was equally brief. The learned trial judge agrees that the statement of loss of revenue given in evidence is *prima facie* evidence as per s. 38(4) of ESA 1990 for loss of revenue, but dismissed the counterclaim on the ground that Tenaga did not lead evidence to show who had caused the tampering of the meter. The judgment impliedly confirms that the meter had been tampered with to attract s. 37(1), (3) or (14) of ESA 1990, and to show that an offence had been committed.

[9] The only question for determination in this appeal is whether there must be conviction under s. 37(1) or (3) or (14) to recover loss of revenue pursuant to s. 38(3) to (5) and whether the person convicted must be the consumer ie, Ternakan the respondent in this case.

Second Appeal

[10] Tenaga's claim is similar to the counterclaim in the first appeal. Tenaga's claim can be summarised as follows:

(i) EE-Lian is the consumer of electricity;

(ii) the electricity meter was tampered;

(iii) loss of revenue was RM1,027,888.76 with interest at 8% and costs; and

(iv) notice issued was under s. 38(1).

[11] The statement of claim in the second appeal was comprehensive that not only Tenaga's claim can survive under s. 38(3) to (5) of ESA 1990, but also under contract and/or tort, for tampering with the electricity meter and causing loss of revenue.

[12] If the action is to be based purely on contract and/or tort, then Tenaga cannot rely on the statutory statement under s. 38(4) of which will stand as *prima facie* evidence of quantum of loss of revenue. If s. 38(4) is relied upon, it does not stop the defendant from challenging quantum as well as liability. Section 38(3) to (5) only give some evidential advantage to Tenaga and does not discharge the legal burden to prove its claim when quantum as well as liability is challenged.

[13] In the instant second appeal, the learned trial judge in judgment has confirmed that:

(i) Tenaga's counsel in the opening statement, had said that the claim was premised upon s. 38(3), (4) and (5) of ESA 1990;

(ii) the right to recover loss of revenue presupposed a conviction against the consumer. That part of the judgment reads as follows:

> This decision affirmed a licensee's (like TNB's) right to an urgent disconnection of electricity when circumstances so warranted without proof or any prior conviction under s. 37(1), 37(3) or 37(14) of ESA as prerequisite. Such action could be availed of where as provided therein s. 38(1) "... any person employed by the licensee finds upon the premises evidence which in his opinion proves that an offence has been committed ...". The only precondition for such a drastic action to be taken was the subjective opinion formed by an employee of the licensee as to a likely offence under s. 37(1), s. 37(3) or s. 37(14) been committed.
>
> However, when contrasted with what was expressly stated in s. 38(3) - "The licensee may require the consumer to pay him for the loss of revenue due to the offence committed under section 37(1), 37(3) and 37(14) ...", it could not escape one's attention, that there was a distinction intended by the legislature, in that the right to recover loss of revenue presupposed a conviction been entered on those offences in the first place against the consumer concerned.

(iii) there was sufficient evidence to commence or initiate prosecution;

(iv) the statutory statement under s. 38(4) was *prima facie* evidence of quantum of loss of revenue; and

(v) EE-Lian had not displaced the *prima facie* evidence.

[14] The question to be determined in the second appeal is the same as the first appeal. That is to say, whether there must be conviction under s. 37(1), (3) or (14) to recover loss of revenue pursuant to s. 38(3) to (5) of ESA 1990, and whether the person convicted must be the consumer concerned.

[15] In essence, both appeals deal with same issues for purpose of final disposal.

Jurisprudence Relating To S. 38 ESA 1990

[16] Learned counsel for the appellant had submitted not less than ten cases which support the proposition that a conviction is not necessary and four cases which say a conviction is necessary. However, there is a difference in view whether the consumer himself must be convicted to pursue a claim under s. 38(3) to (5). The references of the cases are as follows:

Conviction Not Necessary

(i) *Claybricks & Tiles Sdn Bhd lwn. Tenaga Nasional Bhd* [2006] 4 CLJ 892;

(ii) *Tenaga Nasional Berhad lwn. Medicplas Industries Sdn Bhd* [2011] 1 LNS 1410;

(iii) *Goh Guan Seng v. Tenaga Nasional Berhad* [2012] 1 LNS 735; [2012] MLJU 1400;

(iv) *Tenaga Nasional Berhad v. Nikmat Maju Development Sdn Bhd* [2013] 1 LNS 416;

(v) *Tenaga Nasional Berhad v. Empayar Canggih Sdn Bhd* [2013] 1 LNS 637;

(vi) *Tenaga Nasional Berhad v. Ichi-Ban Plastic (M) Sdn Bhd* [2013] 1 LNS 389;

(vii) *Taiwan Chief Precision Technology Sdn Bhd v. Tenaga Nasional Berhad* [2014] 4 CLJ 23; [2013] 4 MLJ 625;

(viii) *Tenaga Nasional Berhad lwn. Eoss Grand Industries (M) Sdn Bhd* [2012] 1 LNS 917;

(ix) *Poon Wai Mung v. Tenaga Nasional Berhad* [2012] 1 LNS 712;

(x) *Ichi-Ban Plastic (M) Sdn Bhd v. Tenaga Nasional Berhad* [2014] 1 LNS 750; [2014] 6 MLJ 461.

Conviction Necessary

(i) *Tenaga Nasional Berhad v. Takatronics (M) Sdn Bhd & Ors* [2010] 1 LNS 1559;

(ii) *Tenaga Nasional Berhad v. JCY HDD Technology Sdn Bhd* [2013] 7 CLJ 799;

(iii) *Tenaga Nasional Bhd v. EE-Lian Plastic Industries (M) Sdn Bhd* [2013] 2 CLJ 697; [2013] 8 MLJ 683;

(iv) *Tenaga Nasional Berhad v. Star Polymer Sdn Bhd* [2004] 1 LNS 124; [2004] MLJU 146.

[17] We do not want to go into the nitty-gritty of arguments relating to statutory interpretation when courts have stated that a common sense approach must also be taken into account when it relates to commercial matters. Support for the abovementioned proposition is found in a number of cases. To name a few are as follows: (i) *Keng Soon Finance Bhd v. MK Retnam Holdings Sdn Bhd & Anor* [1989] 1 CLJ 897; [1989] 1 CLJ (Rep) 1; [1989] 1 MLJ 457; (ii) *Comandate Marine Corp v. Pan Australia Shipping Pty Ltd* [2006] FCAFC 192.

[18] In both cases herein, even though the statute covers the relationship between Tenaga and the consumer, the contract for electricity supply is indeed commercial in nature. It will be abhorrent to justice and fair play for the court to condone a consumer who has benefited from a tampered meter to escape payment to Tenaga for its electricity usage. Similar issues relating to justice and tampering of meter relating to Tenaga was considered by the Court of Appeal, coram consisting of Abdul Wahab bin Patail JCA, Balia Yusof bin Hj Wahi JCA and Tengku Maimun binti Tuan Mat JCA in the case of *Tenaga Nasional Bhd v. AWP Enterprise (M) Sdn Bhd* [2015] 1 CLJ 400. The concept of justice, equity and good conscience is part of our jurisprudence and was applied in the Privy Council decision of *Kenchava Kom Sanyellappa Hosmani and Another v. Girimallappa Channappa Somasagar* AIR 1924 PC 209 to deprive a person convicted of the murder of the deceased to inherit from the estate of the deceased.

[19] We have read both the appeal records and able submissions of the parties. We are grateful for the comprehensive submission. After giving much consideration to the submissions of the counsel for Ternakan and EE-Lian, we take the view that both the appeals of Tenaga must be allowed. Our reasons *inter alia* are as follows:

(i) section 38 relates to a civil action. It has nothing to do with criminal action.

(ii) reading s. 38 as a whole, it will be clear that Parliament has intended a simple procedure to disconnect electricity supply under s. 38(1) and pursue Tenaga's claim for the loss of revenue by issuing a statement under s. 38(4) of ESA 1990, without any need for Tenaga to resort to court to take legal action to disconnect electricity supply. When the claim is for loss of revenue, then the consumer is obliged to pay as per the statement under s. 38(4). However, if the consumer objects to liability or quantum, then Tenaga has very little choice but to proceed with a civil suit to recover the sum for loss of revenue.

(iii) in civil action, it is trite that the burden of proof is on the balance of probabilities unless the exception applies.

(iv) section 38(1) says "offence has been committed". Commission in criminal jurisprudence relates to the fact that the elements of the offence are complete. It does not matter at that stage who committed the offence. In practice, once there is evidence of commission of an offence, the police will investigate and charge the person and upon proof, the court will convict. Commission is the starting point of a crime and conviction is the end. Thus, under s. 38(1), the burden for Tenaga is a light one to show a commission of an offence and in civil cases it must be limited to balance of probabilities only.

(v) the Federal Court in *WRP*'s case as well as the Court of Appeal in *Claybricks* had stated that a conviction is not necessary for any action to be taken by Tenaga under s. 38(1). If the apex court had said otherwise, it will defy common sense and logic as Tenaga is empowered to disconnect electricity within 24 hours of notice upon discovery of tampering of electricity meter. If Tenaga has to wait for prosecution and conviction which may take years, then the consumer will be unduly enriched by the crime and the purpose for which Parliament enacted the legislation will be defeated. It must not be forgotten that it is well established jurisprudence that "Parliament does not enact in vain".

(vi) it was argued that s. 38(1) provides "offence has been committed" and s. 38(4) provides "due to the offence committed" is not one and the same. As was stated earlier, if a common sense approach in commercial matters is not taken into account, such line of argument will amount to splitting hairs and the courts' decision favouring the consumer will be abhorrent to the notion of justice, equity and good conscience. Justice, equity and good conscience are part of our decision making process. When there are two possible views, as reflected in the cases cited above in the construction of s. 38(1) or 38(3) to (5) or s. 38 itself, it is our considered view that the view that will promote justice must be the paramount consideration of the court. When interpreting a statute, the courts just do not confine itself to the literal rule or purposive rule (which has nexus to common sense) *per se*, etc. In *Damai Jaya Realty Sdn Bhd v. Pendaftar Hakmilik Tanah, Selangor* [2015] 1 LNS 7, Hamid Sultan bin Abu Backer JCA, on interpretation of statute had this to say:

> [16] In the instant case the learned trial judge had made much effort to literally interpret section 214A as well as section 301. Literal interpretation of a statute is always subject to rule of law. The hallmark of interpretation and judgment writing in civil cases requires the court to consider justice, equity and good conscience in any decision making process which jurisprudence has been incorporated into our jurisprudence by case laws. [See *Debnarayan Dutt v. Chunilal Ghose* [1914] 41 Cal 137]. Literal interpretation of section 214A as well as section 301, without balancing other provisions of NLC or Acts, case laws, Federal Constitution, etc. as well as the common sense approach relating to justice, equity and good conscience will result in a perverse judgment. For example, in the instant case, a purchaser who had paid about RM48.5 million and who had been guaranteed good title for registration under NLC has been prevented by the respondent from registering the property. Justice, equity and good conscience must be a starting and ending point to be considered in all decision making process and it is always subject to rule of law, and where the law is silent, the courts are obliged to deliver judgment according to justice, equity and good conscience, and at all times act within the framework of the rule of law and the Federal Constitution to

preserve the integrity of the decision making process. In *National Union of Bank Employees v. Director General of Trade Unions & Anor* [2014] 6 AMR 143, the coram of Court of Appeal consisting of Abdul Wahab bin Patail, Linton Albert and Hamid Sultan bin Abu Backer in the interpretation of statute and the application of rule of law and Federal Constitution, had this to say:

> Rule of law in judicial decision making process necessarily means the court must give utmost consideration to the Federal Constitution and when interpreting a statute must not forget that (i) law under the Federal Constitution means substantive law and procedure; (ii) literal rule *per se* is not the only tool to interpret statutes; and other provision of the law and tools have to be taken into consideration for example section 17A Interpretation Acts 1948 and 1967; ...

[20] For the reasons stated above, we hold that a conviction is not necessary to pursue a claim under s. 38(3) to (5) of ESA 1990. In consequence, both the appeals are allowed with costs of RM20,000 each for here and below to be paid by the respondents to the appellant. In the first appeal, judgment is entered for Tenaga's counterclaim in the sum of RM53,169.80. For the second appeal, judgment is entered for Tenaga's claim in the sum of RM1,027,888.76 with interest at 5% per annum from the date of writ to the date of realisation.

We hereby order so.